

ATTORNEY TO CLIENT
CORRESPONDENCE
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MEMORANDUM OF LAW

DATE: May 21, 1996

TO: Jack McGrory, City Manager

FROM: City Attorney

SUBJECT: Fair Labor Standards Act Waiver By Police Department
Captains

You have asked if the agreement you reached with the Police Department captains is legally enforceable. The agreement is summarized in a letter to you dated May 15, 1996, and is signed by Captains Harrison, Lord and Madigan. The letter states in part: "Last, but not least, it is our understanding that the reaching of this accord negates any claim to previous (prior to July 1, 1996) FLSA violations accrued by members of this job classification."

It is well settled that neither employees nor their bargaining representatives can waive the enforcement provisions of the Fair Labor Standards Act ("FLSA"). As the United States Supreme Court stated in *Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728, 67 L.Ed.2d 641, 101 S. Ct. 1437 (1981):

This Court's decisions interpreting the FLSA have frequently emphasized the nonwaivable nature of an individual employee's right to a minimum wage and to overtime pay under the Act. Thus, we have held that FLSA rights cannot be abridged by contract or otherwise waived because this would "nullify the purposes" of the statute and thwart the legislative policies it was designed to effectuate. *Brooklyn Savings Bank v O'Neil*, 324 US 697, 707, 89 L Ed 1296, 65 S Ct 895 (1945); see *D.A. Schulte, Inc.*

v Gangi, 328 US 108, 114-116, 90 L Ed 1114, 66 S Ct 925, 167 ALR 208 (1946); *Walling v Helmerich & Payne, Inc.* 323 US 37, 42, 89 L Ed 29, 65 S Ct 11 (1944); *Overnight Motor Transportation Co. v Missel*, supra, at 577 89 L Ed 1682, 62 S Ct 1216; see 29 CFR Section 785.5 (1974). Moreover, we have held that congressionally granted FLSA rights take precedence over conflicting provisions in a collectively bargained compensation arrangement. See, e.g., *Martino v Michigan Window Cleaning Co.* 327 US 173, 177-178, 90 L Ed 603, 66 S Ct 379 (1946); *Walling v Harnischfeger Corp.* 325 US 427, 430-432, 89 L Ed 1711, 65 S Ct 1246 (1945); *Jewell Ridge Coal Corp. v Mine Workers*, 325 US 161, 166-167, 170, 89 L Ed 1534, 65 S Ct 1063 (1945). As we stated in *Tennessee Coal, Iron & R. Co. v Muscoda Local No. 123*, 321 US 590, 602-603, 89 L Ed 949, 64 S Ct 698, 152 ALR 1014 (1944) (footnote omitted):

"The Fair Labor Standards Act was not designed to codify or perpetuate industry customs and contracts. . . . Congress intended, instead, to achieve a uniform national policy of guaranteeing compensation for all work or employment engaged in by employees covered by the Act. Any custom or contract falling short of that basic policy, like an agreement to pay less than the minimum wage requirements, cannot be utilized to deprive employees of their statutory rights."

This determination that the waiver is unenforceable is not to be considered an admission that police captains are entitled to any premium overtime performed for service prior to July 1, 1996.

JOHN W. WITT, City Attorney

By
John M. Kaheny
Assistant City Attorney

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